

ESTTA Tracking number: **ESTTA486616**

Filing date: **08/01/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Elekta AB		
Entity	public company	Citizenship	Sweden
Address	Birger Jarlsgatan 53 Stockholm, S-103 93 SWEDEN		

Attorney information	John C. McElwaine Nelson Mullins Riley & Scarborough, LLP 100 North Tryon Street IP Department, 42nd Floor Charlotte, NC 28202 UNITED STATES ip@nelsonmullins.com, john.mcelwaine@nelsonmullins.com, meredith.ridley@nelsonmullins.com Phone:843-720-4302
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### Applicant Information

Application No	85131525	Publication date	07/03/2012
Opposition Filing Date	08/01/2012	Opposition Period Ends	08/02/2012
Applicant	Lexel Imaging Systems, Inc. Suite 150 1500 Bull Lea Road Lexington, KY 40511 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 1997/10/27 First Use In Commerce: 1997/10/27 All goods and services in the class are opposed, namely: Cathode ray tubes and cathode ray tube displays
Class 040. First Use: 1997/10/27 First Use In Commerce: 1997/10/27 All goods and services in the class are opposed, namely: Custom manufacture of cathode ray tubes and cathode ray tube displays
Class 042. First Use: 1997/10/27 First Use In Commerce: 1997/10/27 All goods and services in the class are opposed, namely: Design for others, namely, design of cathode ray tubes and cathode ray tube displays

### Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2947428	Application Date	11/28/2003
Registration Date	05/10/2005	Foreign Priority Date	NONE
Word Mark	LEKSELL GAMMA PLAN		
Design Mark	<p style="text-align: center;"><b>LEKSELL GAMMA PLAN</b></p>		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1992/12/31 First Use In Commerce: 1992/12/31 Computer operating software for use in connection with neurosurgical medical devices utilized for stereotactic radiosurgery		

U.S. Registration No.	2881203	Application Date	09/17/2003
Registration Date	09/07/2004	Foreign Priority Date	NONE
Word Mark	LEKSELL GAMMA KNIFE		
Design Mark	<p style="text-align: center;"><b>LEKSELL GAMMA KNIFE</b></p>		
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1987/06/29 First Use In Commerce: 1987/06/29 Neurosurgical medical equipment and devices; namely radiation treatment medical apparatus used for stereotactic radiosurgery		

Attachments	76564376#TMSN.gif ( 1 page )( bytes ) 76549434#TMSN.gif ( 1 page )( bytes ) DOC.PDF ( 13 pages )(155338 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John C. McElwaine/
Name	John C. McElwaine
Date	08/01/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Elekta AB	)	
	)	
Opposer,	)	Opposition No.: _____
	)	
v.	)	Application Ser. No. 85/131,525
	)	
Lexel Imaging Systems, Inc.	)	Mark: LEXEL IMAGING SYSTEMS
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Elekta AB (publ) ("Opposer"), a public company organized and existing under the laws of Sweden, having its principal offices at Birger Jarlsgatan 53, S-103 93, Stockholm, Sweden, believing that it will be damaged by the above-identified application, hereby opposes Application Serial No. 85/131,525, filed on September 16, 2010, by Lexel Imaging Systems, Inc. ("Applicant"), published for opposition on July 3, 2012 at Page TM 108, for the mark LEXEL IMAGING SYSTEMS, reciting the goods, "cathode ray tubes and cathode ray tube displays", in International Class 09 and the services, "custom manufacture of cathode ray tubes and cathode ray tube displays", in International Class 40 and "design for others, namely, design of cathode ray tubes and cathode ray tube displays", in International Class 42.

The grounds of Opposition are as follows:

1. Opposer is a public company organized and existing under the laws of Sweden, having its principal offices at 15 Birger Jarlsgatan 53, S-103 93, Stockholm, Sweden.
2. Opposer is the owner of, and will rely in this Opposition on, U.S. Reg. No. 2,947,428 for the mark LEKSELL GAMMA PLAN for "Computer operating software for use in

connection with neurosurgical medical devices utilized for stereotactic radiosurgery " in International Class 09; and U.S. Reg. No. 2,881,203 for the mark LEKSELL GAMMA KNIFE for "Neurosurgical medical equipment and devices; namely radiation treatment medical apparatus used for stereotactic radiosurgery" in International Class 10 (collectively, the "LEKSELL Marks").

3. The marks depicted in the LEKSELL Registrations have been continuously used in commerce prior to the filing date for the application opposed herein. The registrations are valid and subsisting, incontestable, and in full force and effect. Printouts from the Trademark Applications and Registrations Retrieval (TARR) system, showing the current status and title of the LEKSELL Marks are attached hereto as Exhibit A.

4. Opposer's LEKSELL Marks' registrations' filing dates precede the filing date of the above-referenced application and Opposer's date of first use of the LEKSELL Marks precedes the date of first use for the alleged mark LEXEL IMAGING SYSTEMS claimed in Applicant's application. Furthermore, the LEKSELL Marks' registrations are incontestable. Thus, there is no issue as to Opposer's senior priority.

5. Since the initial uses of the LEKSELL Marks, Opposer has made a substantial investment in advertising and promoting the goods and services sold under the LEKSELL Marks. Opposer has built up extensive goodwill in connection with the sales of products and services sold under the LEKSELL Marks. In fact, the LEKSELL Marks are famous.

6. Applicant is Delaware corporation with its principal place of business at 1500 Bull Lea Road, Suite 150, Lexington, Kentucky 40511.

7. Applicant filed Application Serial No. 85/131,525 on September 16, 2010, to register the alleged mark LEXEL IMAGING SYSTEMS, such application currently reciting the following: "cathode ray tubes and cathode ray tube displays", in International Class 09, "custom manufacture of cathode ray tubes and cathode ray tube displays", in International Class 40, and "design for others, namely, design of cathode ray tubes and cathode ray tube displays", in International Class 42.

8. In its application, Applicant entered a disclaimer of the exclusive right to use "IMAGING SYSTEMS" apart from the mark as shown, thereby indicating that the registrable component and dominant part of the Applicant's mark is the word, "LEXEL."

9. The word LEXEL is visually similar and is pronounced the same as the word LEKSELL. Consumers are also more likely to focus on the first word in a mark.

10. The alleged mark LEXEL IMAGING SYSTEMS depicted in Application Serial No. 85/131,525 is a colorable imitation of, and so resembles, Opposer's LEKSELL Marks, as to be likely, when applied to the goods and services recited in Applicant's application, to cause confusion or mistake or to deceive purchasers, resulting in injury to Opposer.

11. Upon information and belief, the goods and services associated with the LEKSELL Marks and the goods and services described in Application Serial No. 85/131,525 for the alleged LEXEL IMAGING SYSTEMS mark are related and would be sold through the same channels of trade and to the same general class of purchasers. In fact, in a March 7, 2011, office action response, Applicant admitted that its LEXEL IMAGING SYSTEMS products and services were used in the medical field for "high quality x-radiation and teleradiation images", among other uses.

12. Opposer, upon information and belief, avers that customers and the public in general are likely to be confused, mistaken or deceived as to the origin and sponsorship of the goods that would be sold under Applicant's LEXEL IMAGING SYSTEMS mark, and misled into believing that such goods and services are related to, endorsed, sold by, emanate from, or are in some way directly or indirectly associated with Opposer, all to the injury of Opposer.

13. Opposer, upon information and belief, avers that it will be damaged by the registration of the LEXEL IMAGING SYSTEMS mark by Applicant, as set forth in Application Serial No. 85/131,525, as the mark is confusingly similar to the LEKSELL Marks. Upon information and belief, the mark depicted in Applicant's Application Serial No. 85/131,525 would be used in connection with goods and services related to the goods and services offered by Opposer under the LEKSELL Marks.

14. If Applicant is allowed to register its LEXEL IMAGING SYSTEMS mark depicted in Application Serial No. 85/131,525, such registration would falsely suggest a connection with Opposer within the meaning of Section 2(a) of the Lanham Act, to the injury of Opposer.

WHEREFORE, Opposer requests that the opposition to Application Serial No. 85/131,525 for LEXEL IMAGING SYSTEMS be sustained in favor of Opposer, and that no registration be issued thereon to Applicant.

The filing fees required by 37 C.F.R. 2.6(a)(17) for filing this Notice of Opposition on behalf of Opposer are submitted herewith.

[SIGNATURE ON NEXT PAGE]

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Dated: August 1, 2012

By: /John C. McElwaine/

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Attorneys for Elekta AB

## **EXHIBIT A**



**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-07-30 12:01:41 ET**

**Serial Number:** 76549434 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2881203

**Mark (words only):** LEKSELL GAMMA KNIFE

**Standard Character claim:** No

**Current Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.

**Date of Status:** 2010-09-06

**Filing Date:** 2003-09-17

**Transformed into a National Application:** No

**Registration Date:** 2004-09-07

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 106

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** L60 -TMEG Law Office 106

**Date In Location:** 2010-09-06

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Elekta AB (publ)

**Address:**

Elekta AB (publ)  
Birger Jarlsgatan 53  
S-103 93, Stockholm  
Sweden

**Legal Entity Type:** PUBLIC COMPANY

**State or Country Where Organized:** Sweden

**Phone Number:** 46 8 587 255 48

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**GOODS AND/OR SERVICES**

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**International Class:** 010

**Class Status:** Active

Neurosurgical medical equipment and devices; namely radiation treatment medical apparatus used for stereotactic radiosurgery

**Basis:** 1(a)

**First Use Date:** 1987-06-29

**First Use in Commerce Date:** 1987-06-29

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**

1700404

1723535

1748321

2163094

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2010-09-06 - Section 8 (6-year) accepted & Section 15 acknowledged

2010-09-02 - Case Assigned To Post Registration Paralegal

2010-08-13 - TEAS Section 8 & 15 Received

2006-10-04 - Review Of Correspondence Complete

2005-08-01 - PAPER RECEIVED

2004-09-07 - Registered - Principal Register

2004-06-15 - Published for opposition

2004-05-26 - Notice of publication

2004-04-28 - TEAS Change Of Correspondence Received

2004-04-28 - TEAS Change Of Correspondence Received

2004-04-13 - Approved for Pub - Principal Register (Initial exam)

2004-03-24 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Bassam N. Ibrahim

**Correspondent**

Bassam N. Ibrahim

Buchanan Ingersoll & Rooney, P.C.

P.O. Box 1404

Alexandria VA 22313-1404

Phone Number: (703) 836-6620

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**Domestic Representative**

Bassam N. Ibrahim

Phone Number: (703) 836-6620

Fax Number: (703) 836-2021

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**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-07-30 12:02:47 ET**

**Serial Number: 76564376 Assignment Information      Trademark Document Retrieval**

**Registration Number: 2947428**

**Mark**

**LEKSELL GAMMA PLAN**

**(words only): LEKSELL GAMMA PLAN**

**Standard Character claim: Yes**

**Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.**

**Date of Status: 2010-09-24**

**Filing Date: 2003-11-28**

**Transformed into a National Application: No**

**Registration Date: 2005-05-10**

**Register: Principal**

**Law Office Assigned: LAW OFFICE 106**

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location: L60 -TMEG Law Office 106**

**Date In Location: 2010-09-24**

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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**1. Elekta AB (publ)**

**Address:**

Elekta AB (publ)  
Birger Jarlsgatan 53  
S-103 93, Stockholm  
Sweden

**Legal Entity Type:** PUBLIC COMPANY

**State or Country Where Organized:** Sweden

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### GOODS AND/OR SERVICES

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**International Class:** 009

**Class Status:** Active

Computer operating software for use in connection with neurosurgical medical devices utilized for stereotactic radiosurgery

**Basis:** 1(a)

**First Use Date:** 1992-12-31

**First Use in Commerce Date:** 1992-12-31

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### ADDITIONAL INFORMATION

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**Prior Registration Number(s):**

1700404

1723535

1748321

2078303

2163094

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-09-24 - Section 8 (6-year) accepted & Section 15 acknowledged

2010-09-22 - TEAS Section 8 & 15 Received

2005-12-08 - Section 7 correction issued

2005-12-01 - Assigned To Paralegal

2005-09-15 - Request for new certificate filed

2005-09-15 - PAPER RECEIVED

2004-01-07 - PAPER RECEIVED  
2005-08-01 - PAPER RECEIVED  
2005-05-10 - Registered - Principal Register  
2005-02-15 - Published for opposition  
2005-01-26 - Notice of publication  
2004-12-15 - Law Office Publication Review Completed  
2004-12-10 - Assigned To LIE  
2004-12-07 - Approved for Pub - Principal Register (Initial exam)  
2004-07-12 - Non-final action mailed  
2004-07-07 - Assigned To Examiner  
2004-04-28 - TEAS Voluntary Amendment Received  
2004-04-28 - TEAS Change Of Correspondence Received  
2003-12-26 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Bassam N Ibrahim

**Correspondent**

Bassam N Ibrahim

BUCHANAN INGERSOLL PC

PO BOX 1404

ALEXANDRIA VA 22313-1404

Phone Number: (404) 521-3939

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**Domestic Representative**Bassam N Ibrahim

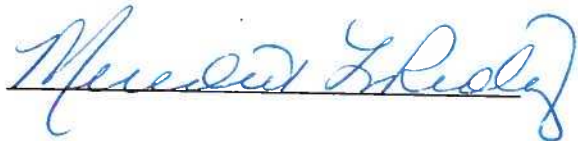
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on the Applicant by mailing said copy on the date below, via First Class Mail, postage prepaid to the current attorney of record for Applicant as listed in the Trademark Applications and Registrations Retrieval (TARR) system for Application Serial No. 85/131,525, whose current correspondence address is listed as:

William Frohoff  
Lexel Imaging Systems, Inc.  
Suite 150  
1500 Bull Lea Road  
Lexington KY 40511

Dated: 8/1, 2012

  
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